

III.D.2. Board of Directors

Introduction

The pre-audit analysis should include an inspection of the complete and unredacted minutes of the board of directors of the corporation and all committees, especially the finance committee. A review of the minutes can be productive in identifying unusual transactions, which may include abusive tax shelters. For example, agents should look for transactions that employ the use of financial products, transactions that require large commitments of funds or borrowings, or transactions not generally considered part of the taxpayer's normal business activities.

Committees

Large corporations usually have a board of directors, an executive committee of the board, and several underlying committees and subcommittees, such as an audit committee, a finance committee, a compensation committee, etc. Agents should request taxpayers to identify, provide a list of, and explain the roles and authority of their various committees. Those that review, approve, or recommend approvals for investments, large expenditures, borrowings, restructurings, and similar transactions, may contain information regarding potentially abusive tax shelters. References to the committees can be found in the annual report. The following committees are common to many companies:

- Audit
 - Technology
 - Compensation
 - Finance
 - Asset/Liability
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Continued on next page

III.D.2. Board of Directors, Continued

Approval of Transactions

Board authorized manuals, policies, delegations and other procedures generally govern corporations, and allow officers to enter into or commit the corporation to transactions that meet certain criteria or come within certain guidelines. Exceptions may apply to expenditures or transactions included in the corporation's annual budget, because the budget is directly approved by the board of directors. Abusive tax shelter transactions generally require large commitments of funds (albeit generally for a short period of time), and the payment of large fees. They also involve transactions that are not generally part of the company's normal business operations. Consequently, at least in the first year of a potential shelter transaction, funding may not be included in the annual budget or operating plan and may require approval by the board of directors or its executive committee.

Minutes

Minutes are prepared and maintained for every meeting of the board of directors and every committee or subcommittee. In addition, other documents are maintained in connection with these board/committee meetings. These include agendas, presentation materials, reports on topics to be discussed, etc. Frequently, corporations retain copies of materials provided to board and/or committee members in advance of meetings. Agents should not expect to see detailed descriptions of the transactions or transactional analysis in the minutes. The materials provided to the committee or the board or used in presentations may or may not include more extensive information. Nevertheless, agents are likely to see names of promoters and/or a transaction name, which may provide the beginning of an audit trail. Agents should follow up leads provided by promoter names or transactions by asking for all documents dealing with the promoter or transaction. Subsequent IDRs can then be issued to garner more information, including the book and tax treatment of the transaction, if necessary.

Furthermore, if a tax shelter transaction is found during the audit, that particular transaction has probably been reviewed and approved by the board of directors or a committee. Thus, the board of director's minutes or committee minutes, and all related documents, should be requested for that particular transaction.

Continued on next page

III.D.2. Board of Directors, Continued

**Availability of
Minutes**

All minutes and supporting materials should be made available to agents for inspection upon request. Agents should also be provided with copies of the relevant minutes and materials upon request. Agents should contact local counsel if these records or copies of relevant documents are not forthcoming, and also should consider summons activity.
